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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SUSIE SANCHEZ, Plaintiff and Appellant, v. THE NATIONAL FOOTBALL LEAGUE, et al., Defendants and Respondents.	A153505 (Alameda County Super. Ct. No. RG15756086)

Plaintiff Susie Sanchez appeals an order denying her motion to vacate as void an order dismissing her class claims. Because the initial order was not void, we conclude the trial court correctly denied her motion.

BACKGROUND

Plaintiff brought this action in January 2015 individually and on behalf of an alleged class of "Raiderettes," a dance troupe affiliated with the Oakland Raiders football team, alleging a variety of violations of California's employment and antitrust laws, unfair business practices, breach of contract, and misrepresentation.

Based on an arbitration agreement Sanchez had signed, the Oakland Raiders moved to compel arbitration of Sanchez's individual claims and sought dismissal of her class claims. The trial court granted the petition on June 3, 2015. The issue in this appeal concerns the ruling regarding the class claims. The trial court first considered whether the court or the arbitrator should decide whether Sanchez's claims against the Oakland Raiders could be arbitrated on a class-wide basis. The court concluded that,

under *Garden Fresh Restaurant Corp. v. Superior Court* (2014) 231 Cal.App.4th 678, 685–686 (*Garden Fresh*), this question was a gateway issue for the trial court to decide in the absence of a clear indication that the parties intended otherwise. Finding no such clear indication, the trial court decided the issue itself rather than leaving it for an arbitrator to decide. On the merits, the court concluded the arbitration agreement did not provide a contractual basis for class arbitration, and it dismissed Sanchez's class claims.

The following year, in *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233 (*Sandquist*), the California Supreme Court considered whether the court or the arbitrator should decide whether an agreement permits or prohibits arbitration on a classwide basis. The court disapproved *Garden Fresh* on this point, holding that the question of who decides this issue is a matter of agreement subject to interpretation under state contract law, and that the issue was not subject to a presumption under the Federal Arbitration Act (9 U.S.C. § 1 et seq. (FAA)) that the court, rather than the arbitrator, should make this initial decision. (*Id*. at pp. 241, 256–257, 260 & fn. 9.)

Sanchez filed a "Motion to Vacate Judgment" under Code of Civil Procedure section 473, subdivision (d)[1] on September 18, 2017. She argued the June 3, 2015 order dismissing her class claims was void under *Sandquist*. The trial court denied the motion on December 8, 2017, concluding that, although it might have reached a different decision if *Sandquist* had been decided before the June 3, 2015 order, that order was not void.

DISCUSSION

Section 473, subdivision (d) authorizes a trial court to "set aside any void judgment or order" upon a party's motion. Sanchez contends the June 3, 2015 order was void because, under *Sandquist*, the trial court lacked jurisdiction to determine the arbitrability of her class claims.

Our high court in *Sandquist* stated: "The issue before us is not whether class arbitration is permissible here, but a matter antecedent to that issue: who should decide

[1] All statutory references are to the Code of Civil Procedure.

whether it is permissible, a court or an arbitrator. *No universal one-size-fits-all rule allocates that question to one decision maker or the other in every case*. Rather, 'who decides' is a matter of party agreement." (*Sandquist*, *supra*, 1 Cal.5th at p. 243, emphasis added.) The arbitration provisions in *Sandquist* extended to " 'any claim, dispute, and/or controversy (including, but not limited to any [and all] claims of discrimination and harassment) which would otherwise require or allow resort to any court or other governmental dispute resolution forum, between [me/myself] and the Company.' " (*Id*. at pp. 245–246.) This language, our high court noted, is comprehensive, and, in tandem with other contractual provisions, suggested the parties chose to have an arbitrator decide the question of whether class arbitration was available. (*Id*. at p. 246.) The court concluded that as a matter of state contract law, the decision was one for the arbitrator, not the court. (*Id*. at pp. 247–248.) The court went on to conclude the FAA did not create a presumption in favor of a court deciding the issue of the availability of class arbitration that would preempt state law rules of contract interpretation. (*Id*. at pp. 251–260.)

Sanchez contends the arbitration agreement between her and the Oakland Raiders—which extends to "all matters in dispute between them, including without limitation any dispute arising from or in any way related to the terms of this Agreement"—is similarly broad and indicates the parties intended the arbitrator to decide the availability of class arbitration; as a result, she argues, the trial court lacked subject matter jurisdiction over that question.

"A judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant," is subject to attack at any time. (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239.) However, where a judgment or order is not void, but voidable, it may not be set aside outside the six-month time limit of section 473, subdivision (b). (*Lee v. An* (2008) 168 Cal.App.4th 558, 563 (*Lee*).) That six-month time limit had long since passed when Sanchez brought her motion.

"The distinction between void and voidable orders is frequently framed in terms of the court's jurisdiction. 'Essentially, jurisdictional errors are of two types. "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." [Citation.] When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or collateral attack at any time." [Citation.]' [Citation.] For example, if a defendant is not validly served with a summons and complaint, the court lacks personal jurisdiction and a default judgment in such action is subject to being set aside as void." (*Lee*, *supra*, 168 Cal.App.4th at pp. 563–564.) In limited circumstances, judgment may also be treated as void when a court grants relief it has no power to grant. (See *Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 950 [collateral attack proper to contest granting of relief court has no power to grant, e.g., default judgment in excess of relief demanded by prayer].) In general, however, when a court " 'merely act[s] in excess of its jurisdiction or defined power,' " the judgment is voidable, not void. (*Lee*, at p. 565.)

Sanchez does not persuade us that the June 3, 2015 order dismissing her class allegations was void under these standards. *Sandquist* makes clear that the court must examine the contract to determine whether the parties intended to assign to the court or the arbitrator the question of whether class arbitration is available, and that there is no "one-size-fits-all rule" allocating that question to one decisionmaker or the other. (*Sandquist*, *supra*, 1 Cal.5th at p. 243.) Depending on the terms of the arbitration agreement, the court may be the proper forum for that determination. It does not lack jurisdiction in a "fundamental sense" over the question of whether class arbitration is available. (*Lee*, *supra*, 168 Cal.App.4th at p. 563.)

Sanchez argues, however, that the court exceeded its jurisdiction and granted relief it had no power to grant because *this* arbitration agreement, properly interpreted under the standards set forth in *Sandquist*, reserved that question for the arbitrator, not the court. In effect, this is an argument that the trial court made either a factual or a legal error in its June 3, 2015 ruling. But if an erroneous judgment or order is within the jurisdiction of

the court, it is not void. (See *Estate of Buck* (1994) 29 Cal.App.4th 1846, 1854; see also *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56 [“ ‘ “ ‘[J]urisdiction [over the subject], being the power to hear and determine, implies power to decide a question wrong as well as right’ ” ’ ”]; *Lombardo v. Huysentruyt* (2001) 91 Cal.App.4th 656, 676 [“ ‘If a judgment, no matter how erroneous, is within the jurisdiction of the court, it can only be reviewed and corrected by one of the established methods of direct attack’ ”]; *Jones v. World Life Research Institute* (1976) 60 Cal.App.3d 836, 840 [distinguishing “a judgment [] void on its face” from one that is “simply erroneous”]; *Armstrong v. Armstrong*, *supra*, 15 Cal.3d at pp. 950–951 [“The error of which plaintiffs in this case complain does not reach the *power* of the court to act, but concerns instead a mistaken application of law”].) The trial court had jurisdiction to determine whether the parties intended it or the arbitrator to rule on whether class arbitration was available. Whether or not it erred in determining that issue was one for the court under the agreement before it, it acted within its jurisdiction.

DISPOSITION

The December 8, 2017 order is affirmed.

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TUCHER, J.

WE CONCUR:

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STREETER, Acting P. J.

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BROWN, J.